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6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9  
10 UNITED STATES OF AMERICA, ) **2:13-CR-00120-APG-~~PAL~~** GWF  
11 Plaintiff, )  
12 vs. ) **STIPULATION FOR**  
13 MICHAEL SAN CLEMENTE, and ) **PROTECTIVE ORDER**  
14 IRINA SANFORD, )  
15 Defendants. )  
16

17  
18 IT IS HEREBY STIPULATED AND AGREED between the parties, DANIEL G.  
19 BOGDEN, United States Attorney for the District of Nevada, and Kimberly M. Frayn and  
20 Andrew W. Duncan, Assistant United States Attorneys, counsel for the United States,  
21 and Michael Gowdey, Esq. Counsel for MICHAEL SAN CLEMENTE; and Melanie Hill,  
22 Esq. Counsel for IRINA SANFORD; that this Court issue the Protective Order<sup>1</sup>:

23 1) protecting from disclosure to the public any discovery materials or  
24 documents containing the personal identifying information and financial identifying

25 <sup>1</sup> This protective order is identical to the First Amended Protective Order  
26 issued in the following companion cases: 2:12-CR-04-MMD-GWF; 2:12-CR-  
082-MMD-GWF and 2:12-CR-084-MMD-GWF, which are all pending trial on  
November 19, 2013.

1 information such as, names, social security numbers, drivers license numbers, dates of  
2 birth, addresses, mothers' maiden names, passwords, debit card and credit card account  
3 numbers, financial lines of credit account numbers, bank account numbers, and Personal  
4 Identification Numbers (PINs), of participants, witnesses and victims in this case (such  
5 materials and documents shall be referred to hereinafter as "Protected Materials");

6 2) protecting from disclosure to the public any discovery materials or  
7 documents containing "Electronic Contraband;"

8 3) designating a defense discovery repository; and

9 4) providing for production of and inspection by the defense of electronic  
10 discovery materials.

11 **PROTECTED MATERIALS AND ELECTRONIC CONTRABAND**

12 1. "Protected Materials" which may be used by the government in its case-in-  
13 chief include personal and financial identifiers, including names, social security  
14 numbers, drivers license numbers, dates of birth, addresses, mothers' maiden names,  
15 passwords, debit card and credit card account numbers, financial lines of credit account  
16 numbers, bank account numbers, and Personal Identification Numbers (PINs), of  
17 participants, witnesses, and victims in this case.

18 2. "Electronic Contraband" shall include all Protected Materials, passwords  
19 giving access to individual computers owned by individuals other than the defendants or  
20 businesses owned by anyone other than the defendants, malware, files originating with  
21 or belonging to government agencies, and IP addresses of computer servers which  
22 contain, or for which there is a reasonable basis to believe contains, any of the  
23 information, files or data described in this paragraph.

24 3. Discovery in this case is voluminous and much of it includes Protected  
25 Materials and Electronic Contraband. Redacting the Protected Materials and Electronic  
26 Contraband would prevent the timely disclosure of discovery to the defendants.

1           4.     The United States agrees to provide Protected Materials and Electronic  
2 Contraband without redaction.

3           5.     Access to Protected Materials and Electronic Contraband will be restricted  
4 to persons authorized by the Court, namely defendants, attorneys of record and  
5 attorneys, paralegals, investigators, experts, and secretaries employed by the attorneys  
6 of record and performing on behalf of defendants in case number 2:12-CR-004-MMD-  
7 GWF, 2:12-CR-083-MMD-GWF, 2:12-CR-084-MMD-GWF, and 2:13-CR-00120-MMD-  
8 PAL ("the defense"). Access shall specifically include, but shall not be limited to: defense  
9 discovery consultant, Russ Aoki, Esq., AOKI LAW PLLC., Seattle, Washington, 98101.

10          6.     The following restrictions will be placed on the defense unless and until  
11 further ordered by the Court. The defense shall not:

12           a.     make copies for, or allow copies of any kind to be made by any other  
13 person of Protected Materials and Electronic Contraband;

14           b.     allow any other person to read Protected Materials and Electronic  
15 Contraband ; and

16           c.     use Protected Materials and Electronic Contraband for any other  
17 purpose other than assisting in preparation for trial, trial, and appeal.

18          7.     Any copies, reproductions, or notes made by the defense, which  
19 specifically copy or particularize Protected Materials or Electronic Contraband must be  
20 stored in a locked facility when not in use, and if stored on an electronic device, the  
21 device must not be connected to the Internet at any time, except as needed to establish  
22 a connection to the CCAP environment. All papers, copies, reproductions, and notes  
23 maintained by the defense, which contains Protected Material and Electronic Contraband  
24 shall be handled in accordance with the provisions set forth in paragraph 10, upon  
25 conclusion of the criminal case.  
26

1           8. Defendants' attorneys shall inform any person to whom disclosure may be  
2 made pursuant to this Order of the existence and terms of this Court's Order and of the  
3 on-going obligation to comply with its restrictions.

4           9. The requested restrictions shall not restrict the use or introduction, as  
5 evidence, of discovery materials and documents containing Protected Materials and  
6 Electronic Contraband during the trial of this matter.

7           10. Upon conclusion of this action, defense attorneys shall return to  
8 government counsel or destroy and certify in writing to government counsel the  
9 destruction of ALL discovery materials and documents produced in these cases,  
10 including, but not limited to, electronic discovery materials containing Protected Materials  
11 and Electronic Contraband, within a reasonable time, not to exceed thirty (30) days after  
12 the last appeal is final.

13           **DEFENSE DISCOVERY REPOSITORY**

14           11. After conducting a hearing in case numbers 2:12-CR-004-MMD-GWF,  
15 2:12-CR-083-MMD-GWF, 2:12-CR-084-MMD-GWF and 2:13-CR-00120-MMD-PAL,  
16 which was closed to government counsel, the Honorable Magistrate Judge George W.  
17 Foley, Jr., ordered that a defense discovery repository should be established and  
18 maintained during the course of these three cases. The Court also designated Karen  
19 Winckler, Esq. a CJA panel attorney, to act on behalf of the collective defense in case  
20 numbers 2:12-CR-004-MMD-GWF, 2:12-CR-083-MMD-GWF, 2:12-CR-084-MMD-GWF,  
21 and 2:13-CR-00120-MMD-PAL as a defense discovery repository.

22           12. From the date of this Order, until further order of the Court, the  
23 government will produce all discovery materials to the defense discovery repository. The  
24 defense discovery repository shall be responsible for providing the defense access to all  
25 discovery materials produced to it by the government. The government is relieved of any  
26 responsibility, until further order of this Court, to provide individual discovery copies or

1 other individualized access to the discovery materials, other than what it produces to the  
2 defense discovery repository.

3 **ELECTRONIC DISCOVERY MATERIALS**

4 13. "Electronic discovery materials" shall mean electronic files and data, in  
5 whatever computers and computer storage media they may be stored, and forensic or  
6 other reports pertaining to computer networks computers, computer storage media, files  
7 and data, by whomever prepared, which the government is required to produced  
8 pursuant to Fed. R. Crim. P. 16(a).

9 **CCAP**

10 14. Access to electronic discovery materials shall be restricted to the defense.  
11 The defense shall use and maintain all electronic discovery materials solely and  
12 exclusively in connection with this case, including trial preparation, trial, and appeal, and  
13 not for any literary, commercial, or other purposes.

14 15. The government may produce all electronic discovery materials by making  
15 copies of them available on the Clustered Computer Analysis Platform ("CCAP").  
16 Information about the Software Engineering Institute's CERT program at Carnegie  
17 Mellon (CCAP project) was presented to the defense, on or about June 5, 2012, by a  
18 representative of the CCAP project during a discovery meeting with the defense and the  
19 government. Thereafter, the defense notified the government of their consent to the  
20 CCAP for use in the government's electronic discovery production. Absent further Order  
21 of this Court, the government shall not be obligated to make additional copies of any  
22 electronic discovery materials which are available on the CCAP, except that one  
23 complete copy of these materials will also be produced to the defense discovery  
24 repository attorney.

25 16. The defense's inspection of electronic discovery materials on CCAP does  
26 not prejudice their rights to move the Court for addition discovery materials or the  
production of electronic discovery materials in a different form.

1           17. All credentials and certifications necessary to access the CCAP shall be  
2 maintained by defense counsel in a secured facility, and on one or more computers also  
3 kept secured at all times, that are not connected to the Internet at any time, except as  
4 needed to establish a connection to the CCAP environment. All credentials and  
5 certifications necessary to access the CCAP shall be returned to a representative  
6 designated by the CCAP project, within a reasonable time, not to exceed thirty (30) days  
7 after the appeal is final.

8           18. No one shall make or store copies of the electronic discovery materials  
9 made available on CCAP. Any member of the defense who wishes to make or store  
10 copies of the electronic discovery materials made available on CCAP, may do so if, and  
11 only if, the Court, by way of ex parte motion by defense counsel, deems such copies  
12 necessary to assist the defense in trial preparation, trial, and appeal. The CCAP  
13 discovery mechanism will allow for such making and storing of copies by the defense  
14 only upon receipt of a Court order directing that a particular defense counsel, on a  
15 particular date and time, be given authorization by CCAP to make and store copies. This  
16 order shall not specify what materials the defense is requesting to copy from CCAP, but  
17 shall state that the Court has been provided said information in the ex parte motion, and  
18 has deemed such copies necessary to assist the defense in trial preparation, trial, and  
19 appeal. Any copies of the electronic discovery materials on CCAP which specifically copy  
20 or particularize Protected Materials and Electronic Contraband must be stored in a  
21 secured facility, and shall be handled in accordance with the provisions set forth in  
22 paragraph 10 above, upon conclusion of the criminal case.

23           a. Although the defense cannot print or store copies of the electronic  
24 discovery materials on CCAP, absent a court order, they may take notes concerning the  
25 electronic discovery materials. If such notes specifically copy or particularize Protected  
26 Materials or Electronic Contraband, the notes must be used, stored, and maintained, as  
provided for by this Order.

1           b.       The defendants may not themselves make any notes from the  
2 electronic discovery on CCAP which specifically copy or particularize Protected Materials  
3 or Electronic Contraband. Instead, the defendants may ask defense counsel to do so on  
4 their behalf. However, such notes shall be made only if the defense counsel agrees they  
5 are necessary to assist the defense in trial preparation, trial, and appeal, and must be  
6 used, stored, and maintained by defense counsel as provided for by this Order

7 **Creating, Maintaining and Servicing CCAP**

8           19. Representatives designated by the CCAP project shall construct the CCAP  
9 environment and shall load the electronic discovery materials into the environment prior  
10 to the defense accessing the CCAP. After the defense is permitted to access the CCAP,  
11 additional electronic discovery materials may only be loaded into the CCAP environment  
12 upon joint agreement between government counsel and the defense discovery repository  
13 attorney, or upon further order of the Court.

14           20. A representative shall be designated by the CCAP project to physically  
15 maintain the equipment needed to sustain the CCAP environment. Only this  
16 representative will possess a key to the otherwise locked equipment and will maintain a  
17 written log documenting any access made to the equipment. No access to the content of  
18 the CCAP environment will be undertaken during any physical maintenance of the  
19 equipment.

20           21. A representative shall be designated by the CCAP project to access the  
21 CCAP environment to administer cyber repairs to that environment but only as directed  
22 and authorized by the defense discovery repository, in writing.

23           22. The United States shall not monitor or record in any way what electronic  
24 discovery material the defense looks at in the CCAP environment, what the defense  
25 searches for, or anything the defense prints out in paper copy from the CCAP  
26 environment.

23. No administrative log will be kept by any representative of the CCAP project which monitors or records in any way what electronic discovery material the defense looks at in the CCAP environment, what the defense searches for, or anything the defense prints out in paper copy from the CCAP environment. However, an administrative log will be maintained by a representative designated by the CCAP project, which documents the date, time, and IP address of the connecting computers for each occurrence whenever anyone connects to the CCAP environment. No content from within the CCAP environment will be captured in this log. The log will be produced to the parties anytime, upon written request, for review to assure ongoing compliance with this Protective Stipulation and Order. The defense shall have an ongoing duty to provide the defense discovery repository with an up-to-date listing of the IP addresses for the computers that the defense uses to access the CCAP environment.

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**CONCLUSION**

24. The parties shall promptly notify the Court and opposing counsel in writing if any discovery materials protected herein are disclosed either intentionally or unintentionally to anyone not designated as authorized to access them.

DANIEL G. BOGDEN  
United States Attorney

LAW OFFICE OF MELANIE HILL

*/s/ Kimberly Frayn*  
By: \_\_\_\_\_  
KIMBERLY FRAYN  
Assistant United States Attorney  
Counsel for the Plaintiff

*/s/ Melanie Hill*  
By: \_\_\_\_\_  
MELANIE A. HILL  
Counsel for Defendant Irina Sanford

LAW OFFICES OF MICHAEL I. GOWDEY

*/s/ Michael I. Gowdey*  
By: \_\_\_\_\_  
MICHAEL I. GOWDEY  
Counsel for Defendant Michael San Clemente

**ORDER**

IT IS SO ORDERED this 11th day of June, 2013.

  
UNITED STATES MAGISTRATE JUDGE